

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Disclosure of Mill Assessment Reporting
DPR Regulation No. 04-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6388 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to the disclosure of mill assessment reports of pesticide registrants.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on May 24, 2004. Comments regarding this proposed action may also be transmitted via e-mail <dpr04002@cdpr.ca.gov>, or by facsimile (FAX) transmission at (916) 327-9688.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small business. This proposal only affects the Department's operating procedures. It does not change any reporting requirement for businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pesticide registrants are required by 3 CCR section 6833 to report quarterly the total dollars of sales and total pounds or gallons of each registered pesticide product sold into or within California. This section facilitates the collection of the mill assessment required in Division 7, Article 4.5 of the Food and Agricultural Code (FAC), commencing with section 12841. The existing subsection (d) of section 6388 provides that whenever three or fewer registrants report sales of a pesticide containing the same active ingredient, such reports will be considered trade secrets and will not be disclosed by DPR. The proposed action would delete this language of the provision to conform with current California law under the Public Records Act, Government Code (GC) section 6250 et seq.

The designation of the mill assessment reports of registrants in situations where there are three or fewer registrants reporting sales of products containing a single active ingredient as "trade secrets" is invalid, and inconsistent with existing California law, specifically with the requirements of the Public Records Act (GC Code section 6250 et seq.).

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

The mill assessment reports are not "trade secrets" as defined in the Public Records Act or Uniform Trade Secrets Act, Civil Code section 3426 et seq. Even if the information contained in the reports submitted by some registrants pursuant to 3 CCR section 6388 could be arbitrarily designated a "trade secret," the Public Records Act requires their production as a public record unless DPR could make the determination that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. Therefore, the proposed amendment is intended to bring the regulation into compliance with California law.

In addition, DPR proposes to clarify which agency is being referenced in subsection (b) by replacing the previous acronym for U.S. Environmental Protection Agency--"EPA," with the acronym "U.S. EPA."

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the GC because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

DPR anticipates that there will be no fiscal impact to these agencies because the proposed regulatory action makes no change to any existing regulations that are enforced by any local agency.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no increased costs or savings to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the proposed amendment of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the proposed amendment of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur as a result of this proposed regulatory action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses.

AUTHORITY

This regulatory action is taken pursuant to authority vested by FAC sections 11456, 12781, and 12845.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 12843 and 12845.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments only on any changes for 15 days after the modified text is made available.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing, and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

In the event the contact person is unavailable, or questions on the substance of the proposed regulatory action, particularly technical or historical questions concerning the mill assessment report regulations, may be directed to:

Polly Frenkel, Acting Chief Counsel
Department of Pesticide Regulation
Office of Legal Affairs
(916) 324-2666

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by GC section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at [<http://www.cdpr.ca.gov>](http://www.cdpr.ca.gov).

DEPARTMENT OF PESTICIDE REGULATION

Director

Date